

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROBERT NELSON, III,

Plaintiff

v.

UNITED STATES FEDERAL
GOVERNMENT, et al.,

Defendants

Case No.: 3:22-cv-00184-ART-CSD

**Report & Recommendation of
United States Magistrate Judge**

This Report and Recommendation is made to the Honorable Anne R. Traum, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Plaintiff filed an application to proceed in forma pauperis (IFP) and pro se complaint (ECF No. 1-1). On June 8, 2022, the court issued an order granting Plaintiff's IFP application. The court also screened Plaintiff's complaint pursuant to 28 U.S.C. § 1915(e)(2). (ECF No. 3.) Plaintiff's complaint names the United States federal government, Homeland Security and U.S. Food. Elsewhere in the complaint, Plaintiff lists President Joe Biden. There is a reference to privacy under the Fourth Amendment. In the section of the form complaint where Plaintiff is to provide a statement of his claim, Plaintiff merely states: "photo, video, drone, satalie [sic]."

The court found Plaintiff's complaint did not include any factual allegations, let alone allegations sufficient to state a claim for relief that is plausible on its face. Instead, Plaintiff's complaint appeared to be frivolous. The court advised Plaintiff: "a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." *Neitzke v. Williams*, 490 U.S.

1 319, 325 (1989). A complaint is frivolous if “it lacks an arguable basis in either law or in fact.”

2 *Id.* This term “embraces not only the inarguable legal conclusion, but also the fanciful factual
3 allegation.” *Id.*

4 In an abundance of caution, Plaintiff was given 30 days to file an amended complaint to
5 state a plausible claim for relief and was cautioned that a failure to timely file an amended
6 complaint may result in dismissal of his action. Plaintiff did not timely file an amended
7 complaint. Therefore, the court recommends dismissal of this action. Normally, the court would
8 recommend dismissal of a frivolous complaint with prejudice. In this case, interestingly, the
9 advisory letter sent by the court on April 27, 2022, was returned as undeliverable (ECF No. 5);
10 however, the court’s order granting Plaintiff leave to amend was not.¹ Under these
11 circumstances, the court recommends that this action be dismissed without prejudice, and the
12 case be administratively closed.

13 RECOMMENDATION

14 IT IS HEREBY RECOMMENDED that the District Judge enter an order **DISMISSING**
15 this action **WITHOUT PREJUDICE** and administratively closing this case.

16 Plaintiff is advised:

17 1. That he may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to
18 this Report and Recommendation within fourteen days of being served with a copy of the Report
19 and Recommendation. These objections should be titled “Objections to Magistrate Judge’s
20 Report and Recommendation” and should be accompanied by points and authorities for
21 consideration by the district judge.

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23 ¹ Under Local Rule IA 3-1, a party must immediately file written notification of any change of
address, and the failure to do so may result in dismissal of the action, entry of default judgment,
or other sanctions deemed appropriate by the court.

1 2. That this Report and Recommendation is not an appealable order and that any notice of
2 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed
3 until entry of judgment by the district court.

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5 Dated: July 19, 2022

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Craig S. Denney
United States Magistrate Judge